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SEP 13

No. 6

No. 12, Original

In the Supreme Court of the United States

OCTOBER TERM, 1947

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

DECREE PROPOSED BY THE UNITED STATES AND MEMORANDUM IN SUPPORT OF PROPOSED DECREE

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 12, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

DECREE PROPOSED BY THE UNITED STATES

THIS CAUSE came on to be heard on the pleadings and briefs filed by the parties and was argued by counsel.

For the purpose of carrying into effect the conclusions of this Court as stated in its opinion, announced June 23, 1947, it is ORDERED, ADJUDGED AND DECREED as follows:

1. The United States of America is now, and has been at all times pertinent hereto, possessed of paramount rights of proprietorship in, and full dominion and power over, the lands, minerals and other things underlying the Pacific Ocean lying seaward of the ordinary low-water mark on the coast of California, and outside of the inland waters, extending seaward three nautical miles and

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bounded on the north and south, respectively, by the northern and southern boundaries of the State of California. The State of California has no title thereto or property interest therein.

2. The United States is entitled to the injunctive relief prayed for in the complaint.

3. Jurisdiction is reserved by this Court to enter such further orders and to issue such writs as may from time to time be deemed advisable or necessary to give full force and effect to this decree.

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 12, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

MEMORANDUM IN SUPPORT OF PROPOSED DECREE

On June 23, 1947, this Court delivered its opinion in this case in which it concluded that "the United States is entitled to the relief prayed for." The Court stated that "The parties, or either of them, may, before September 15, 1947, submit the form of decree to carry this opinion into effect". It is pursuant to that permission that the decree above set out is proposed by the United States.

The relief prayed for in the complaint filed by the United States (p. 11)[1] was "that a decree be entered adjudging and declaring the rights of the United States as against the State of California in the area claimed by California and enjoining

[1] A copy of the complaint filed in this case is attached as Appendix A, *infra*, pp. 7–11.

the State of California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States." The decree now proposed by the United States embodies the declaration of rights sought by the United States but does not contain injunctive provisions. It declares, however, as did the opinion of this Court, that the United States is entitled to the injunctive relief prayed for in its complaint.

Injunctive relief is not sought at this time for two reasons: (1) The parties to this litigation have entered into a stipulation, dated July 26, 1947, which has been filed with the Clerk of this Court.[2] This stipulation provides, *inter alia*, that until pertinent legislation is enacted by the Congress, but, in any event, not later than sixty days subsequent to July 31, 1948 (paragraph 9), "all operations within or upon the tide and submerged lands lying along the coast of California, carried on under the terms of any lease issued by the State of California prior to June 23, 1947 and now in force, may continue without interruption." Paragraph 1. Injunctive relief against any operations permitted by paragraph 1 of the stipulation would, of course, be inappropriate. And no

[2] This stipulation is commonly referred to as the "operating stipulation"; it is attached as Appendix B to this brief, *infra*, pp. 12–19. The so-called "bays and harbors stipulation" was executed on the same date; it is annexed as Appendix C, *infra*, pp. 20–22.

facts now known to the Government give rise to a present necessity for injunctive relief in other situations. (2) As is apparent from the stipulation above referred to, the parties expect legislative action pertinent to the subject-matter of this litigation. This Court has, in the past, deemed it appropriate that injunctive relief be attuned to anticipated Congressional action. *Oregon & Cal. R. R.* v. *United States,* 238 U. S. 393, 438–439. In the present situation, we think it proper that injunctive relief be withheld until Congress has had a reasonable opportunity to enact legislation providing for the management, administration and control of those areas which this Court has ruled to be subject to the paramount rights of the United States. It should be made clear, however, as we think the proposed decree does, that the United States is entitled to injunctive relief to be available to it as circumstances require, perhaps even before Congressional action.

The decree proposed by the United States is general in terms. This is because the study of the physical characteristics of the area in question, which is a necessary preliminary to the drawing of a line of demarcation between the marginal belt and the tidelands and inland waters, has not been completed. When this study is concluded, it is expected that a further, more detailed, decree will be sought. The application for such a decree, as

well as circumstances which may arise in the future, will undoubtedly require further action by this Court, and, for that reason, it is proposed that jurisdiction be reserved.

It is respectfully submitted that the decree proposed by the United States should be entered by this Court as soon as may be practicable.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

A. DEVITT VANECH,
Assistant Attorney General.

ARNOLD RAUM,
STANLEY M. SILVERBERG,
Special Assistants to the Attorney General.

J. EDWARD WILLIAMS,
ROBERT E. MULRONEY,
ROBERT M. VAUGHAN,
Attorneys.

SEPTEMBER 13, 1947.

APPENDIX A

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 12, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

COMPLAINT

The United States of America, by its Attorney General and its Solicitor General, brings this suit against the defendant, the State of California, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II

At all times herein material, plaintiff was and now is the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and out-

side of the inland waters of the State, extending seaward three nautical miles and bounded on the north and south, respectively, by the northern and southern boundaries of the State of California.

III

The State of California claims some right, title or interest in said lands, minerals and other things of value adverse to the United States.

IV

In the exercise of the rights claimed by it, the State of California has, by general law, Chapter 303, Statutes and Amendments of California, 1921, as amended, authorized the leasing of lands underlying the Pacific Ocean for the exploitation of the petroleum, gas and other mineral deposits in the area in controversy.

V

Pursuant to that law, the State of California has negotiated and executed such leases with many persons and corporations, too numerous to name or to make parties to this action, and many of those persons and corporations have, in violation of the rights of the United States, entered upon the said lands and drilled wells for the recovery of petroleum, gas and other hydrocarbon substances. For a long time past many of those wells have been producing large quantities of petroleum, gas and other hydrocarbon substances of great value, which the lessees of the State have taken and converted to their own uses and for which the lessees have paid to the State large

sums of money in rents and royalties reserved under the leases, but neither the State nor its lessees have recognized the rights and title of the United States nor have they paid to the United States either the value of the petroleum and other things of value taken from the area, or any royalties thereon.

VI

In particular, the Pacific Western Oil Corporation, a corporation organized and existing under the laws of the State of Delaware, now occupies and claims under leases granted by the State of California that certain submerged area in the Pacific Ocean, County of Santa Barbara, State of California, described as follows:

> Beginning at the point where the ordinary high water mark of the Pacific Ocean is intersected by the Easterly side boundary line of the S. M. Spalding Tecolote Ranch Property, which point bears South 0°11′ East 503.92 feet from the Southerly steel end post of the galvanized steel fence on the Easterly side boundary line of the said S. M. Spalding Tecolote Ranch Property, which end post correctly locates the point designated "end of fence" in the Westerly boundary line of Lot "C" as shown on a map entitled "Map of Catherine M. Bell Property near Elwood Station, Santa Barbara County, California", by O. H. O'Neill, Licensed Surveyor, June, 1918, filed July 21, 1919, in Book Twelve, Page 39, Records of Santa Barbara County; thence South 37°31′ West 4021.35 feet to the true point of beginning; thence North 55°22′ West 1528.99 feet; thence North 36°23′ East

3641.35 feet, more or less, to the mean low water line of the Pacific Ocean, which point is South 36°23′ West 380 feet, more or less, from a point on the ordinary high water mark of the Pacific Ocean; thence following said mean low water line of the Pacific Ocean North 86°52′40″ East 123 feet; thence South 40°27′ East 100 feet; thence South 68°16′ East 104 feet; thence South 57°02′ East 1312 feet to a point which is South 37°31′ West 266 feet from a point on the ordinary high water mark of the Pacific Ocean; thence leaving said mean low water line South 37°31′ West 3755.35 feet to the point of beginning, containing 133.891 acres, more or less.

All of said land lying below the line of mesne low tide is situated within the area in controversy. The Pacific Western Oil Corporation, under the claim of right based on the said leases, is now and for a long time past has been producing petroleum of great value in large quantities from that part of the lands situated within the area in controversy and is converting the petroleum to its own uses and paying the State rents and royalties under the leases. The United States has made demand upon the Pacific Western Oil Corporation for the surrender of possession of the said lands within the area in controversy and has made demand that the Pacific Western Oil Corporation discontinue the extraction and removal of petroleum and other minerals from the said land, but despite the demands, the Pacific Western Oil Corporation has failed and refused to do so.

VII

The State of California has no title to or interest in any of the lands in controversy but possesses only those governmental powers which it has with respect to other lands of the United States within the territorial jurisdiction of the State.

VIII

The State has frequently and publicly denied the rights, powers and title of the United States in the area and has claimed fee simple title to the area for itself and, unless the rights of the United States are established and declared by this Court, the State will continue to claim such title for itself and to exercise the rights incident to such title through its officers, agents and employees, and will continue to aid, abet and encourage others, as its lessees, to trespass upon and to take and use the minerals and other things of value in the area, in violation of the rights of the United States, from which the United States will suffer irreparable injury, for which it has no adequate remedy except by this action.

Wherefore, plaintiff prays that a decree be entered adjudging and declaring the rights of the United States as against the State of California in the area claimed by California and enjoining the State of California and all persons claiming under it from continuing to trespass upon the area in violation of the rights of the United States.

TOM C. CLARK,
Attorney General.
J. HOWARD MCGRATH,
Solicitor General.

OCTOBER 1945.

APPENDIX B

Operating stipulation

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 12, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

STIPULATION

WHEREAS, on June 23, 1947 the Supreme Court rendered its decision in the above-entitled case and in said decision it was determined, among other things,

> that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

and

WHEREAS, the precise location of the "three-mile marginal belt" has not yet been determined, and it is the belief of the parties that further proceedings may be necessary in order to determine the line of demarcation between the "three-

mile marginal belt", and the tidelands and the inland waters of California (including ports, bays and harbors) not claimed by plaintiff in this case, and

WHEREAS, the Court has not yet entered a decree in the above-entitled case, and

WHEREAS, prior to June 23, 1947, the State of California pursuant to its laws executed leases of, and granted easements and other rights in, tide and submerged lands for the production of oil and gas and for other purposes, and

WHEREAS, there are now many wells producing large quantities of oil and gas from such areas, and

WHEREAS, until a line of demarcation between the "three-mile marginal belt" and the tidelands, inland waters, ports, bays and harbors of the State is definitely fixed, it is difficult to determine whether some of the areas covered by said leases, easements, and other rights are within the "three-mile marginal belt", and

WHEREAS, it is in the mutual interest of the parties and of the general public, pending the establishment of a line of demarcation, that the production of oil or gas from wells now in production shall continue and not be interrupted, and also that new wells be drilled in said tide and submerged lands wherever necessary to prevent drainage by wells drilled in other lands, or to protect the respective interests of either of the parties hereto, and

WHEREAS, the Attorney General in presenting the case of the Government herein to the Supreme

Court of the United States made the following statement in oral argument:

> We will recommend to the Congress that legislation be enacted designed to relieve California and those who have operated under State authority, from the necessity of accounting to the United States for revenues derived in the past from the exploitation of any of the lands here involved. Such legislation, in the view of the President, should also establish equitable standards for the recognition of investments made by private interests and should offer a basis for the continued operation of private establishments wherever consistent with the national interest, and on terms which would be fair and just under all circumstances.

AND WHEREAS the supplemental brief for the United States contained the following representation at pages 5 to 6:

> In this connection it is pertinent to note, as stated by the Attorney General at oral argument, that the President had authorized him to say that there is no desire on the part of the President or of any federal official to destroy or confiscate any honest or bona fide investment, or to deprive the State or its subdivisions of any reasonable expectation of return from the areas that have been developed.
>
> The President recognizes that in the event the decision of this Court is favorable to the United States, it will be necessary to have Congressional action looking toward the future management of the resources of this area. And he also intends to recommend to the Congress that legis-

lation be enacted recognizing both prospectively and retrospectively, any equities of the State and those who have operated under it, to the fullest extent consistent with the national interest.

NOW, THEREFORE, it is stipulated and agreed by the parties through their respective counsel that:

1. During the period fixed by paragraph 9 of this stipulation all operations within or upon the tide and submerged lands lying along the coast of California, carried on under the terms of any lease issued by the State of California prior to June 23, 1947 and now in force, may continue without interruption.

2. Annexed hereto are a schedule and sample forms describing the leases heretofore issued which are the subject of this agreement.

3. With the advance approval of the Secretary of the Interior, the State shall, during the period fixed by paragraph 9 of this stipulation, call for bids for, and, to the extent permissible under state law, enter into, new leases in cases where it is necessary to do so in order to prevent drainage of oil or gas from tide or submerged lands by wells drilled in other lands, or to protect the respective interests of the parties hereto. During such time, the State may require any of its lessees to drill new wells or approve their drilling for the purposes described in this paragraph, provided that it gives the Secretary of the Interior notice of its action at least 15 days before drilling is to commence.

4. The State of California agrees to segregate and hold in a special fund all rentals, royalties, and other payments received from said lessees or

under said leases beginning on, and subsequent to, June 23, 1947 and to report the amount of such receipts to the Secretary of the Interior quarterly, commencing three months after the effective date of this stipulation. The State also agrees (1) to report oil and gas production under said leases to the Secretary of the Interior monthly, commencing one month after such date, and (2) to furnish the Secretary of the Interior with complete well records for all oil and gas wells subject to this stipulation. With respect to existing wells, such records shall be furnished within 30 days after the effective date of this stipulation; with respect to wells hereafter drilled pursuant to the terms of this stipulation, such records shall be furnished within 30 days after the completion of each well.

5. At such time as any particular area shall be finally judicially determined, or shall be agreed by the parties hereto, to be within or without the "three-mile marginal belt," the monies segregated and held in the special fund referred to in paragraph 4 of this stipulation shall be distributed and paid over pursuant to the agreement of the parties, or in the absence of agreement pursuant to a final judicial order or decree. The above provisions of this paragraph are not intended to preclude any other proper disposition at an earlier time by reason of an order of the Supreme Court of the United States or of an Act of Congress.

6. This stipulation is designed to regulate and protect the interests of the United States and of the State of California pending further proceed-

ings in this case. Nothing herein shall be deemed to waive or abridge any right or claim which the United States now has or may hereafter have against any lessee or grantee of the State of California; provided however, to insure the production of oil and gas necessary to meet the critical need now existing, plaintiff agrees that as to all operations conducted pursuant to this stipulation after June 23, 1947, under existing or new leases, and during the continuance of this stipulation, the extent of recovery against said lessees, if there be any right of recovery against them, "shall be the value of oil or gas at the time of extraction, without interest, after deducting all costs of development, operation and production, which costs shall include taxes and interest on all expenditures from the date thereof". (Section 349 3/4, California Code of Civil Procedure). It is understood that "costs" as referred to in the foregoing sentence shall be deemed to include such necessary and reasonable expenditures as are recognized by the industry in the areas involved, as well as rents and royalties referred to in paragraph 4 hereof. And plaintiff further agrees that any purchaser for value of oil or gas products purchased after June 23, 1947 from any of said lessees shall be entitled to resell or otherwise deal with such products on the same basis as products derived from undisputed lands not the subject of this litigation.

7. It is understood that the policy of the executive branch of the Government of the United States with respect to proposals for future legislation regarding the subject matter of this litiga-

tion, as expressed in the recitals in this stipulation concerning the statements of the Attorney General at the oral argument before the Supreme Court and in the Supplemental Brief for the United States, has not changed, and in fact is intended to be confirmed by this stipulation.

8. The word "lease" as used herein shall be regarded as including any easement, franchise, license or permit under which the State of California receives rentals or royalties in return for rights granted by the State in tide and submerged lands lying along the coast of California. Nothing herein shall be deemed a waiver by the State of California of any right or equity held by it against a lessee.

9. This stipulation shall remain in effect until pertinent legislation is enacted by the Congress; provided, however, that if no such legislation is enacted prior to July 31, 1948, this stipulation shall terminate as of sixty days subsequent to that date, and the parties hereto shall meet within 30 days after July 31, 1948, to reconsider the terms of this stipulation and to determine whether this stipulation or a revision thereof should be continued for a further period; and provided further, that the moneys held in the special fund described in paragraph 4 of this stipulation shall be retained therein notwithstanding the expiration of this stipulation generally and that distribution of those moneys shall be made pursuant to paragraph 5 of this stipulation.

10. This stipulation shall be deposited with the Clerk of the Court, with the request that it be brought to the attention of the Court at the

opening of the October Term, 1947. Nothing herein shall be deemed in any way to abridge the power or jurisdiction of the Supreme Court with respect to the subject matter of this action.

11. It is understood that the State of California has filed a petition for rehearing in the above entitled case and it is agreed that if such petition is granted, this stipulation shall nevertheless remain in effect during the pendency of this litigation but in no event beyond the time fixed in paragraph 9 hereof.

(Sgd.) TOM C. CLARK,
Attorney General of the United States.
(Sgd.) FRED N. HOWSER,
Attorney General of California.

RECOMMENDED:
(Sgd.) J. A. KRUG,
Secretary of the Interior
of the United States.

Dated this 26th day of July, 1947.

APPENDIX C

(Bays and harbors stipulation)

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 12, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF CALIFORNIA

STIPULATION

WHEREAS, on June 23, 1947, the Supreme Court of the United States rendered its decision in the above-entitled case and in said decision it was determined, among other things,

> that California is not the owner of the three-mile marginal belt along its coast, and that the Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area, including oil.

and

WHEREAS, the precise location of the "three-mile marginal belt" has not yet been determined, and it is the belief of the parties that further proceedings may be necessary in order to determine the line of demarcation between the "three-

mile marginal belt," and the tidelands and the inland waters of California (including ports, bays and harbors) not claimed by plaintiff in this case, and

WHEREAS, the Court has not yet entered a decree in the above-entitled case, and

WHEREAS, the immediate situation can be clarified and further conduct of this litigation expedited if a number of inland waters can be specifically excluded from the claims of the plaintiff in this suit,

NOW, THEREFORE, it is stipulated and agreed by the parties through their respective counsel as follows:

1. The following areas are not claimed by the plaintiff in this litigation:

a. That part of San Francisco Bay landward of a line drawn from Point Diablo, Marin County, California, to Fort Point, City and County of San Francisco, California.

b. That part of San Diego Bay landward of a line drawn from Point Loma to Zuniga Point, on the southwestern end of North Island, San Diego County, California.

c. That part of San Pedro Bay landward of a line drawn from Point Fermin in a northeasterly direction through a point 300 feet due south of the southeasterly extension of the Navy mole and breakwater to the line of ordinary low tide in the City of Long Beach, Los Angeles County, California.

2. It is understood that the lines described in this stipulation are approximate only and do not represent surveyed lines.

3. The foregoing descriptions of San Franciso, San Pedro and San Diego Bays are without prejudice to the right of California to claim that the lines separating said bays from the "three-mile marginal belt" lie farther seaward than the lines herein described and that said bays include larger water areas than herein described.

4. It is further stipulated that this stipulation is without prejudice to the rights of either party to claim that any other waters within the State boundaries of California constitute bays, ports, harbors, or inland water or marginal sea, as the case may be.

5. This stipulation shall be deposited with the Clerk of the Court, with the request that it be brought to the attention of the Court at the opening of the October Term, 1947. Nothing herein shall be deemed in any way to abridge the power or jurisdiction of the Supreme Court with respect to the subject matter of this action.

(Sgd.) TOM C. CLARK,
Attorney General of the United States.

(Sgd.) FRED N. HOWSER,
Attorney General of California.

RECOMMENDED:

(Sgd.) J. A. KRUG,
Secretary of the Interior of the United States.

Dated this 26th day of July, 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947